IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2746 OF 2005

Kolhapur Zilla Sahakari Dudh
Utpadak Sangh Ltd. ... Petitioner

V/s

State of Maharashtra
through the Department of Agriculture,
Animal Husbandry, Dairy Development &
Fisheries, & ors. ... Respondents

Mr. P.D. Dalvi for the petitioner.

Mr. V.P. Malvankar, A.G.P. for the respondent Nos. 1 & 2.

None for the respondent Nos. 3 and 4.

CORAM: H.L. GOKHALE &
J.H. BHATIA, JJ.

DATED: 22ND JUNE, 2006

P.C.:

1. Heard Mr. Dalvi in support of this petition. Mr. Malvankar, A.G.P. appearing for the respondent State has filed a further reply of one Mr. Vijay Narayan Zende, Special Auditor, Class-I of the Co-operative Societies (Dairy), Kolhapur, which is on behalf of the respondents herein.

2. The petitioner herein is a Federal Milk Producing Society, Dist. Kolhapur and the dispute in this matter is regarding audit fees that the petitioner has to pay for the purpose of the Government audit. There have been Govt. Resolutions fixing the audit fees issued from time to time. The petitioner society has no grievance with respect to the fixation of the audit fees which was done earlier until the Government Resolution of 24.5.1989. On 19.2.1991 a Govt. Resolution was issued fixing the audit fees at the rate of 10% of the total commission and 5% of the trading profit and no minimum or maximum was prescribed. This Govt. Resolution of 19.2.1991 and then a subsequent Govt. Resolution dated 6.7.1991 giving its clarification are sought to be declared as arbitrary and ultra-vires Article 14 of the Constitution of India.

3. It is material to note that the petitioner society had filed another writ petition bearing W.P. No. 4116 of 1995 wherein also order of the respondents dated 19.2.1991 was sought to be declared as bad-in-law and interim order was passed in that matter on 6.9.1995 while admitting the petition under which the petitioner society was directed to pay Rs.5 lacs p.a. for the

co-operative year 1992-1993 onwards and continue to pay on demand at the rate of Rs.5 lacs p.a. towards audit charges during the pendency of the petition. The petitioner society was also directed to furnish a security for the balance of demand of audit fees for the years 1989-1990 onwards. That earlier petition was disposed of on 6.7.2004 by permitting the petitioner to make a comprehensive representation to the respondents for reconsidering the revision in the scale of audit fees. The representation was to be decided by the concerned authorities of the State Government within six months. The said petition was accordingly disposed of.

4. Although a reply is filed by the State as pointed out above, Mr. Malvankar, A.G.P. points out that, in view of the said order passed on Writ Petition No. 4116 of 1995 of the petitioner, and another Writ Petition being No. 4117 of 1995 of one Warana Milk Producing Society, the Minister concerned incharge of Dairy Development has fixed an hearing on their representations on 28.6.2006 at 3.00 p.m. in the Minister’s chamber. This being so, Mr. Malvankar suggests that the controversy can be sorted out by deciding of the representation of the petitioner. Mr. Dalvi appearing for the petitioner society has certainly

no objection to this course.

5. We must however note that, as stated above, the petitioner is making a grievance with respect to the revision effected on 19.2.1991. Thereafter, there has been further revision on 1.11.1995 under which the petitioner society would fall under the highest category of turn over and will be required to pay an amount of Rs.10 lacs per year. The petitioner society has paid that amount. Thereafter there has been one more revision by further Govt. Resoloution dated 18.3.2002. Under that Govt. Resolution, the petitioner society is required to pay Rs.12,60,000/- plus 60 paise for each thousand rupees of turn over above Rs.100 crores. We are told that the petitioner society has no dispute about that Govt. Resolution also and has made the payment accordingly.

6. This dispute is only about the Government Resolution dated 19.2.1991 and for the period covered under the Govt. Resolution dated 19.2.1991. For this period the society has made the payment at the rate of Rs.5 lacs as directed under the interim order and was also given the security for the balance amount as directed in the impugned order. No doubt it is for the Minister to hear

and decide the representation of the petitioner which we expect him to decide early and preferably within six months from the date of this order. Needless to state

and the Minister knows that, after hearing, he shall also pass a reasoned order.

7. The petition stands disposed of.

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(H.L. GOKHALE, J.)

(J.H. BHATIA, J.)